United Nations CED/C/SR.219

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
7 September 2017

Original: English

Committee on Enforced Disappearances
Thirteenth session

Summary record (partial)* of the 219th meeting
Held at the Palais des Nations, Geneva, on Monday, 4 September 2017, at 3 p.m.

Chair: Mr. Huhle (Vice-Chair)

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* No summary record was prepared for the rest of the meeting.

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Pending the election of the new bureau, Mr. Huhle (Vice-Chair) took the Chair.

The meeting was called to order at 3 p.m.

Consideration of reports of States parties to the Convention

Initial report of Lithuania (CED/C/LTU/1; CED/C/LTU/Q/1 and Add.1)

1. *At the invitation of the Chair, the delegation of Lithuania took places at the Committee table.*

2. **Mr. Griciūnas** (Lithuania), introducing the initial report of Lithuania (CED/C/LTU/1), said that in its preparation the Government had conducted widespread consultations and had involved State institutions and bodies in assessing the implementation of the Convention. Although an established procedure had been followed in making the draft available to the public and circulating it among civil society organizations, those organizations had decided not to put forward any remarks or proposals. By ratifying the Convention and recognizing the Committee's competence to receive and consider communications from individuals and from States parties under articles 31 and 32, the Government had demonstrated its commitment to preventing enforced disappearance, conducting investigations into such crimes, locating disappeared persons, bringing perpetrators to justice and ensuring reparation for victims and their families. Although no cases of enforced disappearance had occurred in Lithuania, the Government recognized the importance of the Convention as a landmark human rights instrument that complemented national legal protections; it hoped that its dialogue with the Committee would contribute to further strengthening the protection of human dignity.

3. In that regard, the Criminal Code had been amended to incorporate the definitions of enforced disappearance and unlawful separation of children as autonomous crimes, in keeping with the provisions of the Convention. Enforced disappearance was addressed in the Code under the chapter on crimes against humanity and was not subject to a statute of limitations; therefore, the concept established in Lithuanian law fully corresponded to the definition provided in Convention.

4. No special measures had been taken in national law in relation to the criminal responsibility of superiors, as required under article 6 of the Convention, since the Government considered that the existing provisions of the Criminal Code established responsibility for negligent performance of duties by a commanding officer and defined the concept of complicity as the intentional joint participation in the commission of a criminal act. Nevertheless, the Government remained open to further recommendations by the Committee.

5. Amendments to article 28 of the Code of Criminal Procedure had come into effect in March 2016, recognizing that the victims of enforced disappearance included not only persons who had died or had suffered physical harm, pecuniary loss or other damages as a result of that criminal act, but also close relatives who had incurred damages as a result of the death of a family member.

6. In November 2016 in Vilnius, the Prosecutor General's Office had hosted an international conference on the application of the Convention with the participation of representatives of governmental institutions and non-governmental organizations (NGOs), civil servants, judges and law enforcement officials. The Government considered that the event, which had included a presentation by a member of the Committee's secretariat had enhanced the participants' understanding of the Convention and its principles.

7. Lastly, he informed the Committee that the Seimas Ombudsmen's Office had recently obtained A status under the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). As the main voice of human rights in Lithuania, the Office was expected to increase its influence in respect of many issues and to serve as a bridge between national and international human rights instruments, and between civil society and the State.

8. **Ms. Janina** (Country Rapporteur) said that the Committee welcomed the State party's ratification of the Convention and its acceptance of the competences set forth under

articles 31 and 32 thereof; it also appreciated the timely submission of the report. However, she would be grateful for information that would explain the lack of input by NGOs. Did their non-participation stem from their unfamiliarity with the Convention?

9. Congratulating the State party on the accreditation of the Seimas Ombudsmen's Office in March 2017, she asked whether the authorities planned to allocate the financial and human resources that the Office required to comply with its new status. She also wished to know whether any practical measures had been put in place to support its work, and whether the Office also served as the national mechanism for the prevention of torture.

10. While the report and the replies to the list of issues (CED/C/LTU/Q/1/Add.1) clearly indicated the place of international law in the domestic legal system, she considered that more information might be provided about whether the Convention was directly applied by the courts. Did Lithuanian judges have a culture of invoking international instruments in their judgments, and if so, might they refer to the Convention?

11. She noted with satisfaction that a definition of enforced disappearance had been incorporated in domestic law and was broadly in line with the Convention; however, she wondered why that definition did not make reference to arrest. In the light of the claim that the definition in national law was broader than the one contained in the Convention, she would be grateful for an explanation of how that was so, since the Committee would welcome any innovations that might help strengthen protection for victims. Furthermore, she wished to learn whether national law clearly distinguished between enforced disappearance as an autonomous crime and as a crime against humanity. Had the State party adopted provisions establishing separate regimes for each case?

12. The Committee noted that the State party did not intend to introduce a new regime concerning the criminal responsibility of superiors inasmuch as it deemed that the existing legal framework was adequate. However, the definition of complicity contained in the Criminal Code was not aligned with article 6 of the Convention, which required measures to hold criminally responsible superiors who knew about the commission of a crime of enforced disappearance by subordinates, exercised responsibility for the activities concerned with the crime and failed to take preventive measures. Therefore, the delegation might describe how the relevant provisions of the Criminal Code were interpreted and state whether they ought to be brought into line with the Convention.

13. Considering that the articles amending the Criminal Code introduced sentences of 3 to 15 years' imprisonment for the crime of enforced disappearance, she asked whether such penalties were commensurate with the gravity of the crime and how they compared with the penalties that were imposed for other serious offences. Noting that mitigating and aggravating circumstances were applied as part of the general criminal justice framework, she asked the delegation to explain how mitigating and aggravating circumstances might be specifically applied to a case of enforced disappearance.

14. While the Committee understood that domestic laws guaranteed the right of individuals to submit complaints of enforced disappearance, she was interested to know what procedures were followed by prosecutors or other investigators when no formal complaint had been filed. Were they able to institute ex officio proceedings in the event that an alleged enforced disappearance was reported by the media or an NGO? She would also appreciate information about the protection of persons who filed criminal complaints, in particular with reference to the Law on the Protection of the Participants of Criminal Proceedings and Criminal Intelligence, Officers of Justice and Law Enforcement Institutions against Criminal Influence, which described two situations in which protection measures were not applied, namely, where the person did not accept a proposal on the application of measures aimed at protection against criminal influence, and where a protected person refused the protection measures imposed. What was the difference between those two situations?

15. Concerning the prevention of persons alleged to be involved in an enforced disappearance from taking part in the investigation, she asked whether the recommendations on the distribution of investigations into criminal acts carried the force of law and whether they applied only to pretrial investigation institutions or also governed cases involving police or prison officials. Additional details might also be provided about

the legal and practical significance of the right of exclusion set forth in article 57 of the Code of Criminal Procedure. Moreover, she wished to know whether pretrial investigation institutions conducted investigations in cases involving the armed forces or whether a separate authority was responsible for investigating crimes committed by members of the military.

16. Given that the replies to the list of issues mentioned that prosecutors faced restrictions on their right of access to information, she asked what those restrictions entailed and whether they applied in cases of enforced disappearance. Were prosecutors prevented from entering pretrial investigation institutions, places of detention or other premises in which it was suspected that persons had been unlawfully deprived of their liberty? Lastly, the Committee would welcome information on any extradition treaties that the State party had concluded with other countries since ratifying the Convention, in the light of its obligation to include enforced disappearance as an extraditable offence in such treaties.

17. **Mr. Decaux** (Country Rapporteur), recalling that under the Convention exceptional circumstances may not be invoked as a justification for enforced disappearance, asked whether the terms "martial law" and "law on the state of war", mentioned in the replies to the list of issues, were synonymous. More importantly, he wished to understand the consequences that might arise from exceptional situations, such as whether the competences of ordinary courts might be transferred to military courts. Considering article 12 of the Convention, which required that persons and units being investigated should not be able to hinder or influence the conduct of the investigations, and in the light of the Committee's statement on enforced disappearance and military jurisdiction, he asked whether the military police was accountable to the ordinary or the military courts.

18. The Committee would also appreciate further details concerning the State party's application of articles 6 (1) (a) and 6 (1) (b) of the Convention, which addressed accomplices and the criminal responsibility of superiors as separate issues, and in relation to the universal jurisdiction mentioned in paragraph 51 of the report.

The meeting was suspended at 3.40 p.m. and resumed at 4 p.m.

19. **Mr. Griciūnas** (Lithuania) said that the Seimas Ombudsmen's Office was indeed the national mechanism for the prevention of torture and he considered that its accreditation as a national human rights institution with A status was a reflection of its good work. The Office had recently submitted reports to the Ministry of Justice on how aspects of the prison system might be improved and the rights of individuals respected, and it had also presented its observations during the universal periodic review of Lithuania. While resources in the public sector were always limited, he believed that there was a trend to invest in the strengthening of human rights, which had led the Seimas to earmark additional resources that were expected to be available in the near future.

20. Concerning the participation of civil society, the draft report had been published online and made accessible to institutions, NGOs and the general public prior to its adoption; State institutions were obliged to consider and decide whether to adopt comments and suggestions. The Government had directly informed a number of NGOs that the draft report had been published and was available for review, and it had invited them to prepare observations or prepare shadow reports. In his opinion, the NGOs that dealt with missing persons in Lithuania did not consider that their disappearances were connected with State action, and that was the likely reason for their non-participation.

21. Lithuania had not signed any new extradition treaties since 2013, and therefore no clauses making enforced disappearance an extraditable offence had been inserted; however, legal requests for extradition from other countries were reviewed by the competent authorities in accordance with a special procedure. International treaties such as the European Convention on Human Rights were directly applicable by the Lithuanian courts, including courts of first instance, courts of appeal and the Supreme Court.

22. **Ms. Karalytė** (Lithuania) said that article 100 of the Criminal Code contained a definition establishing that criminal liability for enforced disappearance lay with those who "detained, abducted or otherwise deprived another person of his liberty". The definition

thus incorporated the sense of the term "arrest", which in the Criminal Code was understood to mean the short-term deprivation of liberty.

23. The Government considered that the Criminal Code met the requirements set forth in articles 6 (1) (a) and 6 (1) (b) of the Convention. In particular, articles 24 and 100 of the Code defined the organizers of or accomplices to the crime of enforced disappearance, while article 54 stipulated that courts should consider the crimes committed by organizers and accomplices, take into account the extent of their involvement and punish them accordingly. Superiors who were aware of a crime of enforced disappearance incurred additional liability for negligence under article 113. Given that chapter XV of the Code dealt with crimes against humanity and war crimes, individuals could only be held liable under article 100 when the criminal act was undertaken systematically or massively. Article 11 of the Code classified crimes as minor, less serious, serious and grave and provided for sanctions of varying levels of severity. Enforced disappearance fell into the category of grave crimes, for which penalties exceeded 10 years' imprisonment. By comparison, other grave crimes with severe penalties included genocide, homicide and treatment of persons prohibited under international law, all of which carried long-term prison sentences or life sentences. Mitigating and aggravating circumstances were set forth separately in articles 59 and 60; courts could decide to apply those provisions to certain types of crime, including enforced disappearance, on a case-by-case basis.

24. **Mr. Meška** (Lithuania), speaking about potential crimes of enforced disappearance where no complaint was lodged by a direct victim, said that any information supplied to law enforcement officials concerning such matters would be checked and then referred to a prosecutor, who might decide to launch a pretrial investigation. Prosecutors could respond to media reports of criminal acts either by verifying the information themselves or by instructing a pretrial investigation institution to do so. If there were sufficient grounds, the prosecutor would launch a pretrial investigation that would be conducted by the relevant institution; however, where allegations related to the activities of law enforcement officers, the prosecutor should conduct the pretrial investigation himself so as to avoid possible relations between the investigating officers and individuals suspected of involvement. Articles 57 and 58 of the Criminal Code listed the grounds for removal from an investigation, while the Code of Criminal Procedure prohibited dual procedural status, such that any officers suspected of involvement in the commission of a criminal act were not allowed to participate and could be removed from the investigation. Moreover, the recommendations on the distribution of investigations into criminal acts stipulated that where a criminal act might have been committed by an employee of the pretrial investigation institution, the investigation should not be assigned to the same unit of that institution. In such cases, the investigation was referred to another pretrial investigation institution or taken over by the prosecutor. Judges were subject to principles governing the hierarchy of judicial institutions; a judge that had ruled on a particular case could not be involved in reviewing the judgment in a higher instance court.

25. Regarding the right of prosecutors to receive information or to access specific premises, article 155 of the Code of Criminal Procedure stipulated that with the authorization of a judge, the prosecutor might enter the premises of any private or public institution and access any information held by such institutions that might be relevant to the pretrial investigation. When information had been provided that a person had unlawfully been deprived of liberty, prosecutors, police and other pretrial investigation officers had the absolute right to enter premises and were authorized to use force if the owners sought to deny them access. Penalties might be applied to persons who refused to grant access.

26. The principle of universal jurisdiction was established under article 7 of the Criminal Code, which stipulated that persons might be liable for crimes such as enforced disappearance when liability was grounded in international agreements. Any prosecutor receiving information about a possible criminal act of such a nature, regardless of the territory in which it had been committed, was bound to verify the information and to launch a pretrial investigation. Pretrial investigation institutions had been instructed to forward information pertaining to such cases to the Prosecutor General's Office, which would verify that proceedings had not been instituted in other States before deciding whether to proceed on the basis of universal jurisdiction.

27. **Mr. Stravinskas** (Lithuania) said that measures for protection against criminal influence had been established by law and included the physical protection of persons and their property, temporary transfer to a safe location, change of identity and curriculum vitae, change of appearance, issue of firearms and financial support. If a person declined the offer of protection measures, then the measures would not be applied, although in practice no one had yet declined proposed measures. However, there had been some cases in which individuals had refused the continuation of protection measures that had been in place for some time. The police provided physical protection if it was required by persons who were injured or unconscious, until such time as they were able to accept or decline the application of protection measures.

28. **Ms. Damalakaitė** (Lithuania) said that the competence of the military police was defined by the Law on Military Police. The military police was competent primarily to deal with crimes committed by or against military personnel and crimes committed on military bases or on military transports and had only limited competence in the area of civilian justice. If, upon investigating a crime, the military police determined the perpetrator to be a civilian and had cause to detain that individual, it was required to hand him or her over to the civilian police immediately, although there was no legally prescribed time limit for doing so. Both the military and civilian police were obliged to follow the pretrial investigation procedures laid down in the Code of Criminal Procedure.

29. Martial law could be imposed by the Seimas, if it became necessary to defend the homeland or to fulfil the country's international obligations, or by the President, when an armed attack was perpetrated against the national territory. In the latter case, the President was required to seek approval from the Seimas before martial law could be imposed. The Government was required to inform the staff of the country's diplomatic missions, the Secretary-General of the United Nations and the President of the European Council of any decision to impose martial law and of any planned derogations from fundamental rights, such as the right to privacy.

30. If martial law was imposed, the civilian police, civilian courts and courts of general jurisdiction would continue to function until it became practically impossible for them to do so. If, in times of conflict, the civilian police was no longer able to discharge its functions, the military police could take over. The military police was composed of military officers designated by the Chief of Defence. In times of conflict, the time frame for criminal investigations prescribed by the Code of Criminal Procedure may not always be observed. Military courts did not operate in Lithuania in times of peace. However, if civilian courts lost the ability to function in times of conflict, military courts could be established. Military courts, like civilian courts, were governed by the Code of Criminal Procedure. The decisions handed down by military courts could be appealed before the Supreme Court. Military courts could also be established under martial law to try war crimes, crimes against humanity and crimes against the independence, territorial integrity or national defence system of Lithuania.

31. **Ms. Janina** said it was her understanding that the Criminal Code characterized enforced disappearance as an individual crime and not as a crime against humanity. She asked whether there were any domestic legal provisions that characterized enforced disappearance as a crime against humanity in keeping with the Rome Statute of the International Criminal Court and other relevant international instruments. The specificity and seriousness of the crime of enforced disappearance necessitated the introduction of a robust system to prevent and protect against that phenomenon. In that connection, she asked what steps the State party had taken to incorporate into its domestic legislation the criminal liability of superiors who knew or consciously disregarded information which clearly indicated that subordinates under their effective authority and control were committing or were about to commit the crime of enforced disappearance, or who failed to take measures to prevent the commission of or to report that crime, in line with article 6 (1) (b) of the Convention.

32. Noting that the crime of enforced disappearance carried a prison sentence of between 3 and 15 years, she asked whether the Lithuanian courts typically imposed the maximum prison sentence of 15 years on the perpetrators of an enforced disappearance which had resulted in the death of the victim and whether they had ever found the

mitigating circumstances applicable in a given case to warrant the imposition of a prison sentence of less than three years. The delegation might also indicate whether it was possible to appeal against the refusal of a prosecutor to act upon a formal request for the investigation of an alleged enforced disappearance and, if it was possible to do so, before which authority and within what time frame. Similarly, it would be helpful to know whether persons submitting such a request who had been denied special protection by the judicial authorities or whose special protection had been rightly or wrongly terminated could also challenge that decision and, if that were the case, before which authority. She asked how the State party guaranteed the safety of persons who had reported cases of enforced disappearance in the event their request for special protection had been denied.

33. **Mr. Decaux** said that, while article 6 of the Convention was undeniably complex and its requirements stringent, the State party still had a duty to ensure that its domestic criminal legislation covered all aspects relating to the commission of and complicity in the crime of enforced disappearance, including the responsibility borne by superiors in respect of subordinates under their effective authority and control and any failure on their part to prevent or halt the commission of or to report an enforced disappearance. Likewise, the State party's domestic criminal legislation should take due account of the higher standards of responsibility applicable to a military commander or to a person effectively performing that role under relevant international law. Only by fulfilling all the requirements set out in article 6 could the State party create the legal certainty necessary to establish criminal liability for and to effectively prosecute the crime of enforced disappearance. The delegation should also describe the measures taken by the State party to fulfil its obligation under article 3 of the Convention to investigate alleged acts of enforced disappearance committed by non-State actors and to bring those responsible to justice. He would also welcome more information on the activities of the NGO dedicated to supporting the relatives of missing persons. Did that NGO also assist victims of human trafficking?

34. **Mr. Figallo Rivadeneyra** said that the delegation should clarify the criteria used to determine the length of the prison sentence to be imposed on perpetrators of the crime of enforced disappearance and indicate whether the widespread or systematic practice of enforced disappearance in the State party would attract consequences and penalties that were commensurate with a crime against humanity under applicable international law, despite it only being characterized as an individual crime in the Criminal Code. He would also like to hear more about potential scenarios in which mitigating or aggravating circumstances might lead the courts to impose a more lenient or a harsher penalty on perpetrators of enforced disappearance.

35. **Mr. Ravenna** said it was his understanding that Lithuanian judges had successfully applied the principle of universal jurisdiction in a small number of cases. He asked whether there was a specific legal provision that allowed for the extraterritorial prosecution of the crime of enforced disappearance on the basis of the active or passive personality principle. He also wished to know whether the State party's domestic criminal legislation established the criminal liability of a superior who, despite not having played an active role or served as an accomplice in the commission of an enforced disappearance, had failed to discharge the responsibility conferred upon him or her by his or her rank by not acting to prevent or halt the crime or to submit the matter to the competent authorities for investigation and prosecution.

36. **Mr. Baati** said it appeared that superiors could only be held criminally liable when there was evidence to suggest that they had intentionally participated in the commission of an enforced disappearance or when they knew that the crime of enforced disappearance was going to be committed and they neglected to prevent or halt it. He asked what measures the State party envisaged taking to ensure that superiors were held criminally liable in all the circumstances provided for in article 6 of the Convention and what penalties were imposed on superiors who neglected to prevent or halt the commission of the crime of enforced disappearance. Lastly, he would appreciate more information on the scope of the mandate of and the nature of the functions performed by the Seimas Ombudsmen.

37. **Mr. Ayat** said that he found article 15 of the Law on Military Police, which prohibited a military police officer from carrying out a manifestly unlawful order, not to be in full compliance with article 6 (2) of the Convention, which provided that no order or

instruction whatsoever from any public authority, civilian, military or other, may be invoked to justify the crime of enforced disappearance, as there was a degree of ambiguity in the former as to what exactly constituted a manifestly unlawful order. Recalling that article 33 (2) of the Rome Statute of the International Criminal Court provided that orders to commit genocide or crimes against humanity were manifestly unlawful and that enforced disappearance could constitute such a crime in certain conditions, he asked whether the State party intended to take steps to remove that ambiguity. He would also like to know the maximum penalty that could be imposed on the perpetrators of an enforced disappearance which had resulted in the death of the victim and how that penalty compared with those imposed for other serious crimes, such as murder.

38. **The Chair**, noting that the mitigating circumstances set out in the Criminal Code were applicable to all crimes without distinction, asked whether the State party might consider expanding the relevant provisions to include the mitigating circumstances provided for in article 7 of the Convention, which were specific to the crime of enforced disappearance. Recalling that, under article 12 (4) of the Convention, the State party was obliged to take measures to ensure that persons suspected of having committed the crime of enforced disappearance were not in a position to influence the progress of an investigation, he said that it would be useful to know who bore the responsibility of determining whether there were sufficient grounds to suspect a person of having participated in the commission of that crime.

39. **Mr. Griciūnas** (Lithuania) said that the Seimas Ombudsmen's Office, which reported directly to the Seimas, served as both the country's national human rights institution and the national mechanism for the prevention of torture. The legal characterization of the crime of enforced disappearance in the Criminal Code served to distinguish it from other forms of disappearance by making specific reference to the role of the State in its commission. Despite being characterized as an individual crime, the State recognized that enforced disappearance constituted per se a crime against humanity. The length of the prison sentence to be imposed on perpetrators of the crime of enforced disappearance was determined by the courts on a case-by-case basis. If an enforced disappearance resulted in the death of the victim, the perpetrators would be liable to the penalties prescribed for the crime of enforced disappearance and those prescribed for unlawful killing. Only in exceptional circumstances might the courts judge the mitigating circumstances applicable in a case of enforced disappearance to warrant the imposition of a prison sentence of less than three years. In all such cases, the perpetrator of the enforced disappearance had been found not to have acted intentionally. The imposition of a more lenient penalty than that prescribed by law tended to be a source of contention between the prosecution and defence and so the decision was usually taken by a higher court, rather than the court of first instance.

40. **Ms. Karalytė** (Lithuania) said that article 62 of the Criminal Code, which provided for the imposition of a more lenient penalty than that prescribed by law, was applied only in exceptional circumstances and that, even if all the relevant conditions were met, the decision to apply it remained at the discretion of the court. The mitigating circumstances set out in article 59 of the Criminal Code, despite being of a more general nature, were in line with those set out in article 7 (2) (a) of the Convention. It should be recalled that the list of mitigating circumstances contained in article 59 was not exhaustive and that the courts might determine other mitigating circumstances to apply in a given case. Article 100 of the Criminal Code, which defined and established criminal liability and prescribed penalties for the crime of enforced disappearance, should be read in conjunction with articles 24 and 113 of the Criminal Code, which defined complicity and established criminal responsibility and prescribed penalties for superiors who neglected to prevent or halt an enforced disappearance, respectively. Under article 100 of the Criminal Code, it was not necessary for an enforced disappearance to entail grave consequences, such as the death of the victim, to be considered a criminal act. The commission of any of the acts constituting enforced disappearance was sufficient to establish criminal liability. If the victim of an enforced disappearance died as a result of that crime, the perpetrators could be held criminally liable for enforced disappearance and unlawful killing and could incur multiple penalties or a harsher single penalty.

41. **Mr. Meška** (Lithuania), replying to questions posed on the principle of universal jurisdiction, said that the Criminal Code established the competence of the State to launch an investigation into a criminal act irrespective of the territory in which it had been committed or the nationality of the perpetrator, provided that sufficient information was available. Before launching a criminal investigation, the Lithuanian authorities contacted the competent authorities of the State in question to verify that an investigation was not already under way. All information pertaining to the case was to be transmitted to the Prosecutor General's Office, which had a specialized unit responsible for handling such cases.

42. In cases where a formal request for an investigation into an alleged enforced disappearance had been submitted by someone other than the victim, the prosecutor seized of the case could launch a criminal investigation on his or her own initiative or instruct the competent law enforcement agency to do so. If the prosecutor decided not to launch an investigation, the petitioner was entitled to appeal that decision before the judicial authorities within 10 working days. If the petitioner had compelling reasons for not being able to meet that deadline, the judicial authorities could decide to extend it by up to six months.

43. **Ms. Bernackienė** (Lithuania) said that the NGO mentioned by Mr. Decaux provided assistance to victims of human trafficking and forced prostitution, as well as to the relatives of missing persons. Moreover, it conducted a wide range of prevention activities and provided input into public policies to combat those phenomena.

44. **Ms. Damalakaitė** (Lithuania) said that article 27 of the Law on the Organization of the National Defence System and Military Service prohibited issuing military personnel with an unlawful order and forcing military personnel to perform an unlawful act. Any order to commit the crime of enforced disappearance was manifestly unlawful and entailed criminal liability. A military commander who issued an order forcing military personnel to break their oath, a clearly unlawful order or an order violating universally recognized principles and standards of international law could be held criminally liable. All military commanders were responsible for ensuring that their subordinates abided by the laws governing military discipline and international humanitarian law. Upon learning of a crime or a violation of military discipline or international humanitarian law, military commanders were obliged to take all necessary measures within their power to put a stop to the unlawful acts, to ensure they were investigated and to bring those responsible to justice.

45. **Mr. Stravinskas** (Lithuania), replying to the question posed on the possibility of appealing the termination of special protection granted to persons requesting the investigation of an alleged enforced disappearance, said that a decision to terminate the application of special protection measures could be appealed within five working days. The special protection measures in question continued to apply pending the outcome of the appeal. Although the committee responsible for granting or refusing requests for special protection duly considered all the information submitted to it, the final decision rested with the Prosecutor General's Office or the Director of the Prison Department.

46. **Mr. Meška** (Lithuania) said that it was up to the prosecutor to decide, at the pretrial investigation stage, whether to bring charges against a person suspected of having participated in the commission of the crime of enforced disappearance. The prosecutor's decision could be appealed before a higher judicial authority, such as the Prosecutor General or a pretrial investigation judge. The courts determined the length of a prison sentence by assessing the mitigating or aggravating circumstances applicable in the case, in addition to the role played by the accused in the commission of the crime, using the average sentence prescribed by law as a starting point. Any decision to impose a more lenient or harsher penalty than that prescribed by law had to be duly substantiated.

The discussion covered in the summary record ended at 5.35 p.m.